

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SIA HENRY, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, *et al.*,

Defendants.

Case No.: 22-cv-00125

Hon. Matthew F. Kennelly

**JOINT STATUS REPORT**

The Parties submit this Joint Status Report pursuant to the Court's following order: "The parties are directed to file a status report on 2/10/2023 setting out what remaining issues identified in the parties' previous status reports and motions have not yet been ruled upon. This should include a cross reference to the previous submission(s). No further briefing or argument is authorized unless the Court specifically requests it hereafter." Dkt. 315.

**I. PLAINTIFFS' POSITION ON REMAINING ISSUES THAT HAVE NOT YET BEEN RULED UPON**

The three remaining issues from the prior Joint Status Report (Dkt. 274), in which Plaintiffs sought "the Court's guidance" to "facilitate the diligent resolution of these issues" by January 27, 2023, concern (1) designating a custodian from the Presidents and Development Office from the Defendants who did not drop the exemption defense (*id.* at 3-7); (2) discovery of documents and communications created after the filing of the Complaint, on January 9, 2022 (*id.* at 14-16); and (3) Defendants' use of Technology-Assisted Review (TAR) in discovery (*id.* at 17, 21).

*Designating Custodians from the President's Office and Development Office from Defendants Not Dropping the Section 568 Exemption Defense*

Plaintiffs have requested that the Court order that Defendants (excepting Caltech) designate custodians from their President's Office and Development Office Custodians. *Id.* at 3-7. After the hearing on February 8, 2023, the Court ruled that:

The Court has declined for now to require *objecting defendants* to designate custodians from their president's and development offices. This is without prejudice to consideration of this issue later based on a more complete record as described during the hearing

(Dkt. 315) (emphasis added).

The Court did not address the other Defendants. Plaintiffs ask the Court to resolve whether the Defendants who did not drop the 568 Exemption defense (excepting Caltech) should designate appropriate custodians of documents from its President's Office and Development Office;

*Documents and Communications Post-January 9, 2022*

The parties have met and conferred several times on this issue and have come to an agreement that Defendants will produce their non-privileged communications (internally and with third parties, such as lobbyists) in the period leading up to the expiration of the 568 Exemption on September 30, 2022, and the dissolution of the 568 Presidents Group on November 4, 2022. The parties have also agreed that Defendants will produce structured data concerning the awards of financial aid created after the filing of the Complaint and after the expiration of the 568 Exemption.

Plaintiffs ask the Court, however, to resolve the following issues:

1. Whether Defendants should produce structured data concerning awards of financial aid through the end of this calendar year. Plaintiffs have asked Defendants to produce such data so as to include the results of Defendants' early action and early decision admissions, which generally will have been resolved by the end of December 2023, and to produce such data by February 15, 2004.

2. Whether Defendants should produce structured data concerning Defendants' admissions decisions through the end of this calendar year. Plaintiffs have asked Defendants to do so.
3. Whether Defendants should produce non-structured data concerning their policies and practices relating to financial aid and admissions, including any changes thereto, since the filing of the Complaint. Plaintiffs have asked Defendants to produce non-structured data, documents, and communications bearing on these policies and practices, including donor-related applicant information, created through the date of dissolution of the 568 Presidents' Group plus one year—that is, to November 4, 2023.

A further issue, related to the foregoing issues on whether Defendants should produce documents created after the filing of the Complaint responsive to Plaintiffs' revised Requests for Production to be served on Defendants by February 14, 2023, pursuant to the Court's Order on February 8, 2023. Dkt. 315.

*Technology-Assisted Review (TAR)*

The parties have also met and conferred several more times since the last Joint Status Report to discuss Defendants' proposed use of Technology-Aided Review ("TAR") software. There are two primary areas of disagreement remaining.

The first area concerns target recall rate. Recall is a measure of the percentage of responsive documents in a data set that have been correctly classified by the TAR/predictive coding algorithm. When recall reaches 100%, the algorithm has correctly identified all responsive documents in a collection. A recall rate can be achieved through an iterative process, the length of which is determined by the quality of the initial algorithm training process. Plaintiffs believe the target recall rate should be at least 85%, which translates to a false negative rate of 15%. A recall rate of

70% translates to a false negative rate of 30%.

The second area concerns the use of applying search terms before applying TAR methods. The parties disagree over whether it is appropriate to use search terms, which also miss relevant documents, to “pre-cull” Defendants’ documents prior to applying TAR methods to exclude documents. Plaintiffs disagree with such an approach.

## **II. DEFENDANTS’ POSITION**

There are no issues that were ripe in the January 13, 2023, Joint Status Report that remain outstanding following the Court’s Order on February 8, 2023. As to the issue of Development Office and President’s Office custodians raised in the January 13 Joint Status Report, *see ECF No. 274 at 21-30*, Plaintiffs are mistaken that this issue remains open. The Court clearly denied Plaintiffs’ request in the February 8 Order when stating: “With regard to the joint status report filed on 1/13/2023 [274]: (a) The Court has declined for now to require objecting defendants to designate custodians from their president’s and development offices.” ECF No. 315. The Court’s ruling was not limited to the six Defendants dropping the exemption.

As to the issues that both parties agreed were not ripe on January 13, *see ECF No. 274 at 14-18, 31-32, and 40*, the parties have now resolved their dispute regarding search terms, subject to school-specific negotiations and changes to Plaintiffs’ RFPs, and also have made progress towards reaching resolution on post-January 9, 2022, discovery. The post-January 9, 2022, discovery issues are not all ripe at this time. In fact, Plaintiffs have agreed to meet-and-confer again next week after they provide Defendants with a reduced set of RFPs per the Court’s February 8 Order. The parties have also narrowed the issues in dispute as to the use of Technology Assisted Review (TAR).

Defendants have not previously had the opportunity to explain their position on these issues

to the Court, and Plaintiffs' characterization of the agreements reached and areas of remaining dispute is incomplete and inaccurate. Further, Defendants understood the February 8 Order to bar further substantive discussion of these issues at this time. Defendants believe that entry of Plaintiffs' proposed order would therefore be premature and also provide relief inconsistent with the parties' negotiations. As to any issue Plaintiffs believe is ripe now, Defendants submit that Plaintiffs should file a motion to compel, to which Defendants will then respond. Should the Court wish the parties to address their disputes in some other fashion, such as through the submission of a joint status report or otherwise, Defendants will of course do so.

Dated: February 10, 2023

Respectfully submitted,

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